IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 2 OF 1991

Indu Namdeo Lande & Anr. ...Appellants
V/s.
Damu @ Yeshwant Rambhau Chondhe & Anr. ...Respondents

Mr.Jaydeep S. Deo for the Appellants.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : DECEMBER 5, 2007

P.C. :-

1. By this Letters Patent Appeal, the judgment of the learned Single Judge dated 1st September, 1989 in First Appeal No.117/1974 and First Appeal No.189/1974 is challenged. These appeals arise out of a judgment delivered in Suit for partition filed by Chandrabhagabai and an application for probate of the Will of Chandrabhagabai. Application for probate was filed one One Damu. To this Letters Patent Appeal, Damu was joined as respondent no.1. He has admittedly died and appeal as against him abates. Therefore, appeal against that part of the order of the learned Single Judge which relates to the order passed on probate application, does not survive.

2. So far as that part of the order of the learned Single Judge which disposes of appeal arising out of the suit for partition is concerned, in that suit Chandrabhagabai was the plaintiff, her legal representative Jijabai was joined as respondent no.2. Jijabai died during the pendency of Letters Patent Appeal. An application for bringing her legal representatives on record was made but admittedly, only one legal representative was brought on record. There were several legal representatives left behind by Chandrabhagabai but they were not brought on record.

3. With the result, now this appeal, in so far as it challenges the decree passed in civil suit is concerned, it suffers from non-joinder of necessary parties. Therefore, in view of this, Letters Patent Appeal cannot proceed and cannot be heard on merits.

4. Appeal is disposed of.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)